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November 7, 1984

US EPA RECORDS CENTER REGION 5



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The Honorable Paul A. Magnuson
United States District Judge
United States District Court
754 United States Courthouse
316 N. Robert Street
St. Paul, MN 55101

HAND DELIVERED

Re: United States v. Reilly Tar & Chemical Corporation
Civil No. 4-80-469

Dear Judge Magnuson:

In response to your letter of November 5, 1984, and by way of background to the status conference you have called for 8:30 a.m. tomorrow, we wish to advise you of the following developments.

I. Settlement

On October 30, 1984, the United States sent Reilly a proposed Partial Consent Decree concerning construction and operation of a drinking water treatment system at St. Louis Park municipal wells 10 and 15. On November 2, 1984, the United States and the State of Minnesota sent Reilly a proposed "global" Consent Decree, including Remedial Action Plan, addressing all matters at issue with Reilly. Enclosed with the proposed global decree was a letter from the City of St. Louis Park setting forth certain tasks for which the City indicated that it is prepared to take responsibility as part of an overall settlement. The parties intend to meet to discuss settlement on November 8 following the status conference.

II. The Special Master

Reilly was also sent on November 2 a proposed Request for Response Action prepared by the staff of the Minnesota Pollution Control Agency for consideration by the Agency Board at its next meeting on November 27, 1984. This Request is the first formal step in invoking the Minnesota Superfund Act, Minn. Stat. ch. 115B (1983 Supp.), against Reilly and, if approved as submitted, would provide adequate financing from the Minnesota Superfund for the State's share of the expense of a Special Master.

The United States Department of Justice authorized the payment of Special Master expenses under the special

circumstances of this case. A letter will be sent to the Court shortly explaining the particular circumstances which authorize the United States to pay Special Master fees in this case. The United States maintains that CERCLA authorizes recovery of the costs of the Special Master. The State, if Minnesota Superfund counts should be added, would take a similar position on recovery of these costs under that statute. However, plaintiffs believe that the Court need not rule on these issues until later in the litigation.

III. Experts' Reports

The Court's proposed Case Management Order, paragraph 6, would require exchange of all reports of "previously retained" experts by November 30, 1984. Plaintiffs had requested that exchange of these reports be scheduled for December 31, 1984. Plaintiffs intend to present expert testimony on (1) tar refining and creosoting processes, (2) analytical chemistry, (3) hydrogeology (4) toxicology and health risks, and (5) drinking water treatment technology. 1/ We would like modification of the November 30 date as to expert witnesses in two of these areas.

First, the government's analytical chemistry experts have been retained to review the quality of laboratory data produced by several labs around the country. Within the past week we have been producing the remainder of our data to Reilly and inspecting Reilly's data. The chemistry experts require additional time to review and assess the large volume of data collected. Accordingly, we renew our request for a December 31 date for exchange of the analytical chemistry reports.

Secondly, Marc Hult of the U.S. Geological Survey (USGS), will provide expert testimony on the distribution of contaminants in the ground water system and on mechanisms of contamination. The policy of the Survey is not to release draft reports until they have been reviewed at several levels of the Survey and changes satisfactory to the reviewers completed. The more recent information to be presented in Mr. Hult's testimony is included in a USGS draft presently undergoing final review within

1/ In addition, plaintiffs plan to present testimony of the remedial coordinators on governmental investigations and selection of remedy. While these government personnel are expected to give testimony drawing upon their technical expertise, we believe they are not deemed trial experts within the scope of Rule 26(b) Fed. R. Civ. P., or the proposed Case Management Order.

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the Survey. That review may not be completed sufficiently in advance of November 30 to allow Mr. Hult to meet the Court's proposed November 30 date. We would also request a December 31 due date for Mr. Hult's report.

IV. Response Actions to the Ground Water Contamination Problem

The Court has on several occasions expressed concern about governmental efforts to address the ground water contamination problem created by Reilly in the St. Louis Park area. The selection of a granular activated carbon treatment system for St. Louis Park municipal wells 10 and 15 was discussed at the September 19, 1984, pre-trial conference. On October 31, 1984, investigation and reconstruction of the thousand foot deep "Sugar Beet" well at the Reilly site was completed. A brief chronological summary of the major response actions taken to date by local, state and federal agencies is appended to this letter. Dale Wikre, the Director of the MPCA's Solid and Hazardous Waste Division, will be present at the status conference should you wish more details on these actions.

Very truly yours,



STEPHEN SHAKMAN
Special Assistant
Attorney General



DAVID HIRD
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Environmental Enforcement
Section
U.S. Department of Justice

SS:mah

Enc.

cc: All counsel of record
Susan Bergen, Law Clerk to Judge Magnuson
Dale Wikre, MPCA
Paul Bitter, EPA

GOVERNMENTAL RESPONSE ACTIONS
TO GROUND WATER CONTAMINATION BY
PAH CHEMICALS FROM THE REILLY SITE

I. Assessment of the Extent and Magnitude of the Problem.

Barr Report (State)	1975-77
USGS Studies (US, State, SLP)	1978-84

II. Measures to Protect Public Water Supplies

Closure of municipal wells 7, 9, 10, and 15 (SLP)	1978
Closure of municipal well 4 (SLP)	1979
Testing of carbon slurry processes for PAH removal (SLP)	1979-81
Closure of Hopkins municipal well 3 and St. Louis Park municipal well 5	1981
Construction of new municipal well 17 in Hinckley aquifer (SLP)	1981-82
Connection to Plymouth water system (SLP)	1981-82
Hill Report on water supply alternatives (US, State)	1982-83
Administrative Order issued to Reilly to construct treatment plant (US)	1984

III. Measures to Prevent Spread of Contamination

30 wells permitting flow to deep aquifer plugged or modified (State, SLP)	1978-81
Hickok Report on gradient control and soils alternatives (State)	1980-81

IV. Measures to Remove Contamination Sources

Investigation, clean out, and reconstruction of coal tar plugged Reilly deep well and nearby Sugar Beet well (US, State)	1982-84
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